



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2013-0613; FRL- 9939-46 -Region 6]**

**Approval and Promulgation of Implementation Plans; State of New Mexico/Albuquerque-Bernalillo County; Infrastructure and Interstate Transport SIP 2010 Nitrogen Dioxide National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Under the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) submission from the State of New Mexico on behalf of the City of Albuquerque-Bernalillo County for the Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS). The submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2010 NO<sub>2</sub> NAAQS (infrastructure SIP or i-SIP). This i-SIP ensures that the State's SIP for Albuquerque-Bernalillo County is adequate to meet the state's responsibilities under the CAA, including the four CAA requirements for interstate transport of NO<sub>2</sub> emissions.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R06-OAR-2013-

0613, by one of the following methods:

- *www.regulations.gov*. Follow the online instructions.
- E-mail: Tracie Donaldson at *Donaldson.tracie@epa.gov*.
- Mail or delivery: Mary Stanton, Chief, State Implementation B Section (6MM-AB), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2013-0613. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. The *www.regulations.gov* website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special

characters, any form of encryption, and be free of any defects or viruses. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional information on submitting comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Tracie Donaldson, telephone 214-665-6633, [donaldson.tracie@epa.gov](mailto:donaldson.tracie@epa.gov). To inspect the hard copy materials, please schedule an appointment with Tracie Donaldson or Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

On January 22, 2010, EPA revised the primary NO<sub>2</sub> NAAQS (hereafter the 2010 NO<sub>2</sub> NAAQS) to establish a new 1-hour standard, with a level of 100 parts per billion (ppb), based on the 3-year average of the annual 98th percentile of the yearly distributions of 1-hour daily

maximum concentrations (75 FR 6474). Each state must submit an i-SIP within three years after the promulgation of a new or revised NAAQS. Section 110(a)(2) of the CAA includes a list of specific elements the i-SIP must meet. EPA issued guidance addressing the i-SIP elements for NAAQS.<sup>1</sup> The Secretary of the New Mexico Environmental Department (NMED) submitted an i-SIP revision on behalf of Albuquerque-Bernalillo County to address this revised NAAQS on July 26, 2013.

EPA is proposing to approve the Albuquerque-Bernalillo County, New Mexico i-SIP submittal for the 2010 NO<sub>2</sub> NAAQS<sup>2</sup>, as meeting the requirements of an i-SIP.

## **II. EPA's Evaluation of New Mexico's i-SIP and Interstate Transport Submittal**

Below is a summary of EPA's evaluation of the Albuquerque-Bernalillo County, New Mexico i-SIP for each applicable element of 110(a)(2) A-M. The Albuquerque-Bernalillo County Air Quality Control Board (Air Board) provided a demonstration of how the existing Albuquerque-Bernalillo County, New Mexico SIP met all the requirements of the 2010 NO<sub>2</sub> NAAQS on July 26, 2013. This SIP submission is complete by operation of law on January 26, 2014. *See* CAA section 110(k)(1)(B).

*(A) Emission limits and other control measures:* CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the

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<sup>1</sup> "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

<sup>2</sup> Additional information on: The history of NO<sub>2</sub>, its levels, forms and, determination of compliance; EPA's approach for reviewing i-SIPs; the details of the SIP submittal and EPA's evaluation; the effect of recent court decisions on i-SIPs; the statute and regulatory citations in the New Mexico SIP specific to this review; the specific i-SIP applicable CAA and EPA regulatory citations; Federal Register Notice citations for New Mexico SIP approvals; New Mexico's minor New Source Review program and EPA approval activities; and, New Mexico's Prevention of Significant Deterioration (PSD) program can be found in the Technical Support Document (TSD).

applicable requirements of the Act, and other related matters as needed to implement, maintain and enforce each of the NAAQS.<sup>3</sup>

Legislative authority for Albuquerque-Bernalillo County's air quality program codified in Chapter 74 *Environmental Improvement*, Article 2, *Air Pollution*, of the New Mexico statutes, gives the Air Board and the Albuquerque Environmental Health Department's Air Quality Program (AQP) the authority to implement the CAA in Albuquerque-Bernalillo County, New Mexico. Enforceable emission limitations and other control measures are authorized by the New Mexico Air Quality Control Act (AQCA) which established the Air Board and those provisions of New Mexico Administrative Code (NMAC) Title 20, *Environmental Protection*, Chapter 11, *Albuquerque-Bernalillo County Air Quality Control Board*. They can adopt emission standards and compliance schedules applicable to regulated entities; emission standards and limitations and any other measures necessary for attainment and maintenance of national standards; and, enforce applicable laws, regulations, standards and compliance schedules, and seek injunctive relief within the boundaries of Bernalillo County. This authority has been employed to adopt and submit multiple revisions to the Albuquerque-Bernalillo County, New Mexico State Implementation Plan. The approved SIP for Albuquerque-Bernalillo County, New Mexico is documented at 40 CFR Part 52.1620, Subpart GG.<sup>4</sup>

(B) *Ambient air quality monitoring/data system*: The SIP must provide for establishment and implementation of ambient air quality monitors, collection and analysis of monitoring data,

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<sup>3</sup> The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2010 NO<sub>2</sub> NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

<sup>4</sup> <http://www.ecfr.gov/cgi-bin/text-idx?SID=64943a7422504656d8d72e9d6f87f177&mc=true&node=sp40.5.52.ss&rgn=div6>

and providing the data to EPA upon request.

The AQCA provides AQP with the authority to monitor ambient air quality in the county (NMSA 1978, section 74-2-5). AQP maintains a monitoring network for the NAAQS and submits an annual Network Assessment to EPA. AQP's 2014 Air Monitoring Network Plan is the most recently EPA-approved network monitoring plan – approved by EPA on February 3, 2015. All monitoring data is measured using EPA approved methods and subject to the EPA quality assurance requirements. AQP submits all required data to EPA, following the EPA regulations. The monitoring network was approved into the SIP (46 FR 4005, August 6, 1981) and undergoes annual review by the EPA.<sup>5</sup> In addition, AQP conducts an assessment of the monitoring network every 5 years. The most recent of these 5-year monitoring network assessments was conducted by AQP and approved by EPA. Data is available upon request and in the EPA Air Quality System (AQS) database.

*(C) Program for enforcement* The SIP must include the following three elements: (1) a program providing for enforcement of the measure in paragraph A above; (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (i.e., state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).<sup>6</sup>

*(1) Enforcement of SIP Measures.* As noted in (A), the state statutes provide authority for the AQP to enforce the requirements of the AQCA within Albuquerque-Bernalillo County, and any regulations, permits, or final compliance orders. Its statutes also provide the AQP with

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<sup>5</sup> A copy of the 2014 Annual Air Monitoring Network Plan and EPA's approval letter dated February 3, 2015, are included in the docket for this proposed rulemaking.

<sup>6</sup> As discussed in further detail in the TSD.

general enforcement powers. Among other things, they can file lawsuits to compel compliance with the statutes and regulations; commence civil actions; issue field citations; conduct investigations of regulated entities; collect criminal and civil penalties; develop and enforce rules and standards related to protection of air quality; issue compliance orders; pursue criminal prosecutions; investigate, enter into remediation agreements; and issue emergency cease and desist orders. The AQCA also provides additional enforcement authorities and funding mechanisms.

(2) *Minor New Source Review (NSR)*. The CAA requires the SIP to include measures to regulate construction and modification of stationary sources to protect the NAAQS. Albuquerque-Bernalillo County's minor NSR permitting requirements are approved as part of the SIP.<sup>7</sup>

(3) *Prevention of Significant Deterioration (PSD) permit program*. Albuquerque-Bernalillo County's PSD portion of the SIP covers all NSR regulated pollutants as well as the requirements for the 2010 NO<sub>2</sub> NAAQS and has been approved by EPA<sup>8</sup>. EPA approved revisions that address the requirements of the EPA's May 2008, July 2010, and October 2012 PM<sub>2.5</sub> PSD Implementation Rules and to incorporate revisions consistent with the EPA's March 2011 Fugitives Interim Rule, July 2011 Greenhouse Gas (GHG) Biomass Deferral Rule, and July 2012 GHG Tailoring Rule Step 3 and GHG PALs Rule (80 FR 52401, August 31, 2015).

(D) *Interstate and international transport*: The requirements for interstate transport of

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<sup>7</sup> EPA is not proposing to approve or disapprove Albuquerque-Bernalillo County's existing minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C (e.g., 76 FR 41076-41079, July 13, 2011). EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs.

<sup>8</sup> As discussed further in the TSD.

NO<sub>2</sub> emissions are that the SIP contain adequate provisions prohibiting emissions to other states which will (1) contribute significantly to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with measures required to prevent significant deterioration or (4) interfere with measures to protect visibility (CAA 110(a)(2)(D)(i)).

In the original submission, Albuquerque-Bernalillo County requested that EPA not consider element 110(a)(2)(D)(i)(I) as a revision to the SIP at that time stating that this element would be addressed at a future date. In a letter dated October 2, 2015, from NMED Secretary Ryan Flynn to Regional Administrator Ron Curry, a request was made that we now consider and act on this element of the i-SIP. As all the information needed to make this determination was included in the original submission, as well as monitored NO<sub>2</sub> concentrations indicating design values below the standard, and the lack of NO<sub>2</sub> nonattainment areas in New Mexico (including Albuquerque-Bernalillo County) or within close proximity, we find that Albuquerque-Bernalillo County does not contribute to nonattainment nor interfere with maintenance of the NAAQS.

With respect to the interstate transport and PSD requirements of section 110(a)(2)(D)(i)(II), we note that Albuquerque-Bernalillo County's satisfaction of the applicable infrastructure SIP PSD requirements for attainment/unclassifiable areas with regards to the 2010 NO<sub>2</sub> NAAQS have been detailed in the section addressing section 110(a)(2)(C). Two revisions to the SIP to update the Albuquerque-Bernalillo County PSD SIP permitting program consistent with federal requirements have been approved (80 FR 52401, August 31, 2015). These approvals contain revisions to address the requirements of the EPA's May 2008, July 2010, and October 2012 PM<sub>2.5</sub> PSD Implementation Rules and to incorporate revisions consistent with the EPA's March 2011 Fugitives Interim Rule, July 2011 Greenhouse Gas (GHG) Biomass Deferral Rule, and July 2012 GHG Tailoring Rule Step 3 and GHG PALs Rule.



For sources not subject to PSD for any one of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS, Albuquerque-Bernalillo County has adopted the nonattainment new source review (NNSR) provisions required for the 2010 NO<sub>2</sub> NAAQS and other NAAQS at 20.11.60 NMAC – *Permitting in Nonattainment Areas*.

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), this requirement was met by our approval of the regional haze and visibility component of the SIP.

There are no final findings by EPA that New Mexico air emissions affect other countries. Therefore, New Mexico has no international obligations. If EPA makes such a finding, AQP will consult with EPA.

Section 110(a)(2)(D)(ii) also requires that the SIP ensure compliance with the applicable requirements of sections 126 and 115 of the CAA, relating to interstate and international pollution abatement, respectively. Section 126(a) of the CAA requires new or modified sources to notify neighboring states of potential impacts from sources within the State. Albuquerque-Bernalillo County regulations require that affected states, tribes and federal land managers receive notice prior to the commencement of any construction or significant modification of a major source. In addition, no sources located in Albuquerque-Bernalillo County have been identified by EPA as having any interstate impacts under section 126 in any pending actions relating to any air pollutant.

Section 115 of the CAA authorizes EPA to require a state to revise its SIP under certain conditions to alleviate international transport into another country. There are no final findings under section 115 of the CAA against New Mexico with respect to any air pollutant. Thus, the State's SIP does not need to include any provisions to meet the requirements of section 115.

Based upon review of the County's infrastructure SIP submission for the 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that Albuquerque-Bernalillo County has the adequate infrastructure needed to address sections 110(a)(2)(D)(i)(I) and (II)(all 4 interstate transport requirements), as well as 110(a)(2)(D)(ii) for the 2010 NO<sub>2</sub> NAAQS and is proposing to approve this element of the July 26, 2013, submission.

*(E) Adequate authority, resources, implementation, and oversight:* The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements relating to state boards; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

Both elements A and E herein address the requirement that there is adequate authority to implement and enforce the SIP and that there are no legal impediments.

This i-SIP submission for the 2010 NO<sub>2</sub> NAAQS describes the SIP regulations governing the various functions of personnel within the AQP and the Air Board, including the administrative, technical support, planning, enforcement, and permitting functions of the program.

With respect to funding, the resources to carry out the plan are provided through General Funds, Permit Fees and the CAA grant process. Permit Fees are collected under the authority of section 74-2-7.

As required by the CAA and the Environmental Improvement Act (EIA), the SIP

stipulates that any members of the board or body, or the head of an agency with similar powers, adequately disclose any potential conflicts of interest. NMSA 1978 section 74-1-4 provides the Air Board contain at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the board on issues related to the CAA or the AQCA. Board members are required to recuse themselves from rule-makings in which their impartiality may reasonably be questioned.

With respect to assurances that the Air Board has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, the EIA and the AQCA designate the Air Board as the primary air pollution control agency within Albuquerque-Bernalillo County. The statutes allow for local agencies to carry out some or all of the Act's responsibilities.

The Albuquerque/Bernalillo County Air Quality Control Board assumes jurisdiction for local administration and enforcement of the AQCA in Bernalillo County. There are Albuquerque/Bernalillo County SIP provisions which are part of the New Mexico SIP.<sup>9</sup>

*(F) Stationary source monitoring system:* The SIP requires the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from sources, and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made

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<sup>9</sup> Albuquerque/Bernalillo County SIP  
<http://yosemite.epa.gov/r6/Sip0304.nsf/home!OpenView&Start=1&Count=30&Collapse=4.4#4.4> or  
<https://www.law.cornell.edu/cfr/text/40/52.1620>.

available for public inspection at reasonable times.

Requirements in 20.11.47 NMAC, *Emission Inventory Requirements* provide for the reporting of emissions inventories in a format established by AQP on a schedule prescribed by the regulation. There also are SIP state regulations pertaining to sampling and testing and requirements for reporting of emissions inventories. In addition, SIP rules establish general requirements for maintaining records and reporting emissions. This information is used to track progress towards measuring the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with SIP regulations and additional EPA requirements.

(G) *Emergency authority*: The SIP must provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment and to include contingency plans to implement such authorities as necessary.

The AQCA provides the New Mexico Environment Department with authority to address environmental emergencies, including the use of contingency plans to implement emergency episode provisions.

Pursuant to 40 CFR part 51, subpart H, *Prevention of Air Pollution Emergency Episodes*, on January 26, 1989, the Air Board adopted the *Air Pollution Contingency Plan for Bernalillo County* [August 21, 1991, 56 FR 38074; 40 CFR 52.1639, *Prevention of Air Emergency Episodes*], which is part of the SIP and covers air pollution episodes and the occurrence of an emergency due to the effects of the pollutants on the health of persons.

(H) *Future SIP revisions*: States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

Albuquerque-Bernalillo County's SIP is a compilation of regulations, plans and submittals that act to improve and maintain air quality in accordance with national standards. The authority to develop or revise the SIP is based on the authority to adopt new regulations and revise existing regulations to meet the NAAQS. NMSA 1978 section 74-7-5 gives the board the authority to perform these functions. Section 74-7-5 also gives the board the authority to adopt regulations to abate, control and prohibit air pollution throughout Albuquerque-Bernalillo County in accordance with the *State Rules Act*. Nothing in New Mexico's statutory or regulatory authority prohibits Albuquerque-Bernalillo County from revising the SIP in the event of a revision to the NAAQS. The AQCA specifically requires revisions to the SIP if the scenarios set forth in Section 110(a)(2)(H) occur.

*(I) Nonattainment areas:* The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

As noted earlier, EPA does not expect infrastructure SIP submissions to address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.

*(J) Consultation with government officials, public notification, PSD and visibility protection:* The SIP must meet the following three requirements: (1) relating to interagency consultation regarding certain CAA requirements; (2) relating to public notification of NAAQS

exceedances and related issues; and, (3) prevention of significant deterioration of air quality and visibility protection.

(1) *Interagency consultation:* As required by the AQCA, there must be a public hearing before the adoption of any regulations or emission control requirements and all interested persons must be given a reasonable opportunity to submit data, view documents, or argue orally or in writing and to examine testimony of witnesses from the hearing. In addition, the AQCA provides for the power and duty to “advise, consult, contract with and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control”.

(2) *Public Notification:* The i-SIP provides the SIP regulatory citations requiring the Air Board to regularly notify the public of instances or areas in which any NAAQS are exceeded, advise the public of the health hazard associated with such exceedances, and enhance public awareness of measures that can prevent such exceedances and ways in which the public can participate in efforts to improve air quality. 20.11.82 NMAC, *Rulemaking Procedures – Air Quality Control Board*, stipulates notice requirements for rulemaking and is used as a guide for notice requirements when adopting SIPs.

(3) *PSD and Visibility Protection:* The PSD requirements here are the same as those addressed under (C). The Albuquerque-Bernalillo County, New Mexico SIP requirements relating to visibility and regional haze are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of the NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to infrastructure element J after the promulgation of a new or revised NAAQS.

*(K) Air quality and modeling/data:* The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

AQP has the duty, authority and technical capability to conduct air quality modeling, pursuant to the AQCA, in order to assess the effect on ambient air quality of relevant pollutant emissions; and can provide relevant data as part of the permitting and NAAQS implementation process. AQP follows EPA guidelines for air dispersion modeling. Upon request, AQP will submit current and future data relating to air quality modeling to EPA.

*(L) Permitting Fees:* The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

The fee requirements of 20.11.2 NMAC have been approved by EPA as meeting the CAA requirements and were incorporated into the Albuquerque-Bernalillo County, New Mexico SIP [4/10/80, 45 FR 24468]. Albuquerque-Bernalillo County's title V operating permit program codified at 20.11.42 NMAC, *Operating Permits*, was approved by EPA on 9/8/04 [FR vol. 69, No. 173, pp. 54244-47]. In addition, see element (E) above for the description of the mandatory collection of permitting fees outlined in the SIP.

*(M) Consultation/participation by affected local entities:* The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

New Mexico State Statute Section 74-2-5.2 *State Air Pollution Control Agency; Specific*

*Duties and Powers of the Department*, states that, “The department is the state air pollution control agency for all purposes under federal legislation relating to pollution. The department is required to “advise, consult, contract and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control.” Also see element (J) above for a discussion of the SIP’s public participation process, the authority to advise and consult, and the PSD SIP’s public participation requirements.

### **III. Proposed Action**

EPA is proposing to approve the July 26, 2013, infrastructure SIP submission from Albuquerque-Bernalillo County, New Mexico, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2010 NO<sub>2</sub> NAAQS. Specifically, EPA is proposing to approve the following infrastructure elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is not proposing action pertaining to section 110(a)(2)(I) – Nonattainment Area Plan or Plan Revisions as EPA believes these need not be addressed in the i-SIP. Based upon review of the state’s infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in Albuquerque-Bernalillo County, New Mexico’s SIP, EPA believes that Albuquerque-Bernalillo County, New Mexico has the infrastructure in place to address all applicable required elements of sections 110(a)(1) and (2) to ensure that the 2010 NO<sub>2</sub> NAAQS are implemented in the county. We also are proposing to approve the State’s demonstration that it meets the four statutory requirements for interstate transport of NO<sub>2</sub> emissions.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies



with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Nitrogen dioxide (NO<sub>2</sub>).

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 17, 2015.

**Ron Curry,**  
*Regional Administrator, Region 6.*